Monsanto Company *and* Local Union 12610, United Steelworkers of America, AFL-CIO-CLC. Case 9-CA-19163-2

29 February 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 20 July 1983 Administrative Law Judge James L. Rose issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Monsanto Company, Nitro, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) of the Act by refusing to furnish the Union with home addresses of seven bargaining unit employeees, Member Hunter notes that the Respondent did not establish or allege that employee addresses are treated as confidential by it or that the employees' interests in the privacy of their home addresses outweigh the Union's need for such information. See generally *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982).

Member Hunter places no reliance on the statements in section III,B, of the judge's decision regarding the pending tort action against the Respondent and the Union's responsibility to advise employees as to their employment-related rights under common law and Federal statute, in veiw of the judge's finding that the Union needed the employees' addresses to communicate with them on other matters.

Member Dennis agrees with the judge that the Union had the right to advise employees of the toxic substances lawsuit, but she does not find it unnecessary to pass on the judge's apparent conclusion that the Union had an "obligation" or "responsibility" to do so.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was tried before me on May 2, 1983,[1] at Charleston, West Virginia, upon the General Counsel's complaint which alleges that since on or about January 21 the Respondent has refused to furnish the Charging Party certain information and thus violated Section 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, et seq.

[1] All dates are in 1983 unless otherwise indicated.

The Respondent generally denies that it has committed any unfair labor practices and urged eight affirmative defenses.[2]

On the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I hereby issue the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

Monsanto Company is a Delaware corporation engaged in the manufacture of industrial chemicals and rubber additives at a facility in Nitro, West Virginia. In the course of this business, the Respondent annually ships to points outside the State of Virginia goods, products, and materials valued in excess of $50,000. The Respondent admits, and I find, that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union 12610, United Steelworkers of America, AFL-CIO-CLC (the Union), is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

For years, the Union has represented employees of the Respondent in the following appropriate bargaining unit under Section 9(b) of the Act:

> All hourly paid employees employed at the Respondent's Nitro, West Virginia plant, but excluding all office clerical employees, professional employees, salaried employees, all the guards and supervisors as defined in the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

In connection with its representation of employees, the Union has negotiated successive collective-bargaining agreements with the Respondent, the most recent of which is effective from October 1, 1981, through September 30, 1984. This contract covers wages, hours, and other terms and conditions of employment for the approximately 460 employees in the above-described bargaining unit.

Some time in mid-January, Gregory Witt, the Union's grievance committeeperson and union steward, was asked by International representative Larry Ratliffe to get from the Company the addresses of seven current employees and four retirees. (Apparently Ratliffe had attempted, unsuccessfully, to obtain this information himself.) Thus on January 21, Witt saw Personnel Supervisor Roger Arthur and told him that he had a list of employees and retirees whose addresses the Union wanted. Arthur responded that he would have to check before

[2] In its answer, the Respondent also contends that it was not obligated to furnish information relating to retired former employees. The General Counsel did not proceed on those allegations in the complaint which related to retired former employees. Accordingly, the Respondent's 9th and 10th affirmative defenses were withdrawn.

giving Witt that information. That afternoon, Arthur left the following memo for Witt: "I cannot give you any addresses of active or inactive employees without the written consent of the person." To date, the Respondent has refused to furnish the Union the addresses of the seven active employees.

B. *The Analysis and Concluding Findings*

The Respondent concedes that the names and addresses of the bargaining unit employees is information to which the Union is presumptively entitled. *Georgetown Holiday Inn*, 235 NLRB 485, 486 (1978). The Respondent argues, however, that it has met its burden of rebutting the Union's presumed entitlement to the information. Eight grounds are advanced, none of which, I conclude, has merit.

First, the Respondent contends that the Union does not need the addresses of these employees in the proper performance of its function as a bargaining representative. However, as noted, the names and addresses of unit employees is something to which the Union is presumptively entitled. To ensure that it can reach all unit employees to pass on a wide range of information, addresses are necessarily important. Indeed, this is apparently recognized by the Respondent, for it routinely furnishes the Union employees' addresses.

The Respondent also contends that the addresses of employees were not material to the administration of the collective-bargaining agreement at the time requested, nor were there any grievances involving these individuals. However, the Union need not demonstrate that it has a particular item of administration of the contract in mind or "that the information sought is certainly relevant or clearly dispositive of basic negotiating or arbitration issues between the parties. The fact that the information is of probable or potential relevance is sufficient to give rise to an obligation on the part of the employer to provide it." *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978). I conclude that the addresses of employees is information to which the Union is generally entitled notwithstanding there is no pending grievance involving them.

The Respondent asserts that the Union sought this information for purposes of harassment but did not point out how seeking the addresses of seven employees was so burdensome as to amount to harassment. Nor was it shown that the manner in which the Union undertook to obtain this information was harassing in nature. I simply do not find that there is any factual basis to conclude that the Union sought the information for purposes of harassment.

Similarly, the Respondent contends that the Union requested the information in bad faith. But again, the Respondent brought forth no facts upon which a finding of bad faith could be made. Particularly this is so where the bargaining representative is presumptively entitled to the information requested.

The Respondent contends that it did not violated the Act by refusing to furnish these addresses because in fact the Union has this information. In support of this contention, the Respondent notes that as a matter of routine, when employees change their addresses, the Respondent has them make out a change of address card. This is then submitted to payroll and other departments along with a copy to the Union so that the Union can change its addressograph machine (which the Respondent furnished it some years ago).

While in the normal course of events it appears that the Union does in fact get from the Respondent the addresses of employees, presumptively the Union did not have the addresses of the seven employees whose addresses were requested here. Indeed, Arthur testified that he assumed that Witt would not have made the request on January 21 if he had had those addresses. The Respondent's contention in this regard is based only on its assertion that the Union must have had the addresses, because it commonly furnishes addresses. Since there is no evidence that the Union had this information, and denied it did, I must conclude that it did not.

In a like manner, the Respondent contends that the Union could get the information from other sources and therefore the Respondent did not breach its bargaining obligations by refusing to furnish it. There is no evidence to support this contention, and I note that the plant is in rural West Virginia, thus making it difficult, if not impossible, to obtain the addresses through telephone books or like means, particularly when one considers the size of the unit. Thus this defense is not meritorious. *Ace Machine Co.*, 249 NLRB 623 (1980).

In its principal affirmative defense, the Respondent maintains "the Union is acting as an agent for attorneys for the purpose of soliciting plaintiffs for a law suit against the Company, in violation of West Virginia Code Sec. 30-2-16." It thus argues that it had no duty to furnish the addresses requested.

The Union's then president, Paul Shaffer, did post notices on the company bulletin board and sent letters to employees to the effect that many employees of the Respondent had joined in a lawsuit in the Federal District Court of West Virginia alleging that exposure to certain toxic chemicals had affected their health.

The essence of a letter and notices dated November 15, 1982, was to the effect that the law firm of Calwell, McCormick & Peyton was representing certain employees in a suit; that Shaffer had been advised by one of those attorneys that the statute of limitations on the cause of action would run in March 1983; thus, employees were beging advised that they had to become involved in the suit against the Respondent by then or any claims they might have would be barred.

While Shaffer did point out that the law firm of Caldwell, McCormick & Peyton was the only one to his knowledge representing employees in a suit against the Company, he did not indicate to members that they should or needed to retain that law firm in order to obtain benefits. Nor is there any other evidence that Shaffer was acting as an "agent" for the law firm in soliciting employment of that firm. There are insufficient facts to establish that the Union violated the West Virginia code prohibiting certain acts by attorneys and their "agents."

I believe that the letters and bulletin from Shaffer to the membership were a reasonable exercise of his obliga-

tions as an officer of the employees' bargaining representative to advise members of their rights in connection with an action against the Respondent arising out of the employment relationship. It may well be that the Respondent does not like to be sued by employees and would prefer to keep the number of suits to a minimum. However, where employees have rights under Federal statute or common law relating to their employment situation, it certainly is within the general responsibility of their bargaining representative to advise them concerning those rights.

In sum, to the extent that the Respondent argues that the Union is not entitled to the addresses of employees because it was acting as an agent of a law firm in violation of West Virginia statutes, I conclude this allegation has not been proven factually, even if such would support the Respondent's refusal to give otherwise required information. To the extent that the Respondent argues that the Union might use the information requested for some purpose outside its scope as the collective-bargaining representative, I conclude that there is no basis for such a finding. Even if in fact the Union intended to use the addresses it sought from the Respondent to advise employees of their rights and other matters relating to the lawsuit, such is not outside its scope as responsibility of the collective-bargaining representative. Thus, I conclude that even if the Union intended to use the information as the Respondent feared it might, it could do so and the Respondent was not privileged to withhold the information on that basis.

> If information is relevant to collective bargaining, it loses neither relevance nor its availability merely because a union additionally might or intends to use it to attempt to enforce statutory and contractual rights before an arbitrator, the Board or a court.
>
> The fact that other pending litigation exists does not offer an employer a defense to providing information. [*Westinghouse Electric Corp.*, supra at 110–111.]

Finally, there is undenied and generally plausible testimony that the Union needed these addresses in order to communicate with the membership concerning a wide range of matters and events.

Thus even if contacting these individuals about the law suit is considered outside the Union's scope of responsibility, still the Respondent may not withhold the information.

> [I]t is well established that where a union's request for information is for a proper and legitimate purpose it cannot make any difference that there may also be other reasons for the request or that the data may be put to other uses. [*Associated General Contractors of California*, 242 NLRB 891, 894 (1979).]

On balance, therefore, I conclude that the Respondent has not demonstrated any reasonable basis to deny to the Union the addresses of the seven active employees it sought on January 21. Accordingly, I conclude that by refusing to furnish these addresses the Respondent violated Section 8(a)(5) of the Act. I will recommend that it cease and desist from engaging in such activity, and furnish those addresses to the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of the Respondent found above, occurring in connection with its business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having concluded that the Respondent violated Section 8(a)(5) by refusing to furnish the addresses of current employees, I shall order that it cease and desist therefrom and forthwith furnish the addresses of the following employees to the Union: John M. Arthur, Shirley R. Lett, Cecil E. Burford, Doyle R. Lanham, Carroll E. Withrow, Charles E. Buck, and Robert L. Hager.

On these findings of fact and conclusions of law and on the entire record in this matter, I issue the following recommended

ORDER[3]

The Respondent, Monsanto Company, Nitro, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing, on request, to furnish to Local 12610, United Steelworkers of America, AFL-CIO-CLC, the addresses of employees in the bargaining unit described above.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action.

(a) Furnish to Local 12610, United Steelworkers of America, AFL-CIO-CLC, the addresses of the employees named in the remedy section above.

(b) Post at its place of business copies of the attached notice marked "Appendix."[4] Copies of the notice on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish Local 12610, United Steelworkers of America, AFL-CIO-CLC, the addresses of active employees in the appropriate collective-bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the addresses of all bargaining unit employees requested by the Union.

MONSANTO COMPANY